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Section 2510 of the Code of Civil Procedure, now Section 40 of the Surrogate's Court Act, by limiting the broad powers granted in the first part of that section to the specific cases described in the eight subdivisions that followed, which the revisers intended as an *addition to* and *not* as a limitation on, the general powers granted by the revision of 1914. This attitude of the appellate courts shown in the *Holzworth* and other cases compelled the legislature to restate its intention by the interpretative amendment to Section 40 in 1921.

There is no table of cases, and thus the admirable collection of authorities, showing great labor, industry and research on the part of the author, is not made as readily available, considering the sketchiness of the index and table of contents and page headings, as it otherwise would be. To illustrate again: for example, if one desired to see what the author had to say about the effect of the *Holzworth* case, not having a table of cases, he would look under "Equitable Jurisdiction," and find no reference to page 52—simply the reference to page 1847—and instead of having the whole subject of jurisdiction comprehensively discussed in one chapter or section of his book, the page references in two pages of the index under this heading range from the early pages of the book to almost the last page thereof. Moreover, *jurisdiction* and *powers* are not clearly distinguished. The only reference to "Power" under the index heading "Jurisdiction" is "'Power to Direct and Control. Unsafe Investments.' Page 1644." Under general indexing of "Power," there is no such reference, but there is a reference to "Power to Direct Performance of Duty," referring to page 21. This illustrates the fact that the great value of this book in its available material and exceedingly helpful use of authorities is not put at the quick service of the practitioner. This is greatly to be regretted, because the writer speaks with authority. Ordinarily a book on practice may wisely be restricted to quotation and citation of judicial decisions, but where the writer is one who himself has made judicial decisions and has taken part in statutory revision, the practitioner would value his suggestions, not only as to the meaning of such statutory amendments, but as to the restricted meaning that ought to be given to certain prior decisions construing the statutes, as well as his observations from time to time as to a proper development of the law. Nevertheless, the book remains a far step forward in the development of Mr. Heaton's treatment of the subject, and will well repay the study and use of the Bar.

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INSANITY AND MENTAL DEFICIENCY IN RELATION TO LEGAL RESPONSIBILITY. A STUDY IN PSYCHOLOGICAL JURISPRUDENCE. By WILLIAM G. H. COOK. London: GEORGE ROUTLEDGE & SONS, LTD. 1921. pp. xxiv, 192.

The title indicates a broader scope than is actually embraced in the work. The author has confined himself to civil cases, omitting criminal responsibility. The criminal side has been discussed by many writers and attracts popular attention. It is therefore an excellent idea to have a book treating the neglected side of civil responsibility, principally torts, contracts and testamentary capacity. In torts, there is very little authority. The American cases seem to have taken the view that lunatics are liable for the damage caused by such acts as would in sane adults amount to tort of either wilful wrong or culpable negligence.[1] This is probably a survival of an older theory that trespass is a wrong of absolute liability. The view of the author is that a lunatic is incapable of committing a tort. It should be noted, however, that the author is speaking of a high degree

[1] Shearman and Redfield, *Negligence* (5th ed. 1898) § 121.

of insanity, and the differences between him and Salmond[2] are really not great. It should be conceded that in wrongs of absolute liability, which in some cases are strictly not torts at all but concern the adjustment of property rights, lunacy should be no defense.

Theoretically in contracts there is no meeting of minds if one of the parties is insane, and on this foundation the author denies the possibility of a contract and criticizes the cases which hold the insane person liable where the other party did not know of the insanity. Practically, however, in every case where the defense could be set up, the defendant was sane enough to go through the forms of making a contract, and as a leading author says,

"According to the modern view, actual mental assent is not material in the formation of contracts, the important thing being what each party is justified in believing from the actions and words of the man he is dealing with. Accordingly, if one dealing with a lunatic may reasonably suppose he is sane, and makes a bargain with him on that assumption, there is no theoretical difficulty in the lack of mutual assent. Lunatics whose acts can deceive anybody are not so totally devoid of will that their words and acts can be compared to talking while asleep or signing a paper substituted by sleight of hand." [3]

The technical rule advocated by Mr. Cook could apply seldom, but it would open the door to the defense of insanity in many cases. In fact, the practical consideration is that the raving madman raises few problems, and that the difficulties come from those who are more or less sane and who might set up the defense.

It is only in connection with testamentary capacity that the author treats at length of partial insanity. There is a remarkable confusion in the decisions. Some judges have stated that a higher degree of mental soundness is required for a testamentary disposition than for other legal acts (p. 136), while other courts have said that most men find less difficulty in declaring their intentions in regard to the disposition of their property than in comprehending business in some measure new (p. 149). It must be evident that both judges are partly right and partly wrong. It depends on the kind of insanity involved. This study the author has not made. His definitions of the different psychoses are not the latest and there is no attempt to work out the effect of the different kinds of insanity in relation to different acts. Many alienists are inclined to doubt the utility of classification of the various psychoses;[4] but all admit the wide range of difference in pathological changes and in conduct.

To the application of the growing knowledge of insanity to the solution of civil controversies, the author has made no contribution. His essay is an analysis of the English case law, and valuable for that purpose. It is not a study in psychological jurisprudence. From that point of view, the work looks backward. It is an attempt to predicate an entity, "Insanity," a state of mind preventing any voluntary act. On the basis of this classification a few simple rules of incapacity are formulated. But the simplicity is delusive. The basis is an abstraction affording no support for the multitude of cases that arise where the degree of insanity and its effect on civil responsibility is the controverted issue. More practical than the author, the courts have in general solved the problem by balancing the interest of business against the interest of the security of the property of lunatics. The doctrine of mutual assent upon the basis of which the author criticizes the courts is not an eternal verity. The function of psychiatry is not to overturn what the courts have decided, but to assist them in reaching a conclusion. The psychiatrist makes a diagnosis of the mental disorder from which the person is suffering. The

[2] Salmond, *Torts* (4th ed. 1916) § 20.
[3] 1 Williston, *Contracts* (1920) § 254.
[4] *Statistical Manual for the Use of Institutions for the Insane*, published by the Bureau of Statistics of the National Committee for Mental Hygiene.

effect on conduct, and whether the act in question was the effect of the mental disorder or merely an expression of the normal behavior of the person, is the question on which modern psychiatry can shed much light. Different forms of mental disorder give rise to characteristic acts and this knowledge assists materially in determining whether the act in question represents a changed personality. Psychiatry will determine, as accurately as increasing knowledge permits, the exact state of mind of the person whose act is in question, and with this foundation, the law will determine what effect should be given to the act, taking into consideration the social interests concerned. This combination will make psychological jurisprudence, the foundation of which must be sought not in theoretical speculation but in the scientific study of the facts of mental disorder.

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